IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.324 OF 2006

Hiroo T. Shahani .. Applicant

Versus

State of Maharashtra & Ors. .. Respondents

Mr.Subhash Jha i/b. Law Global for applicant

Mr.Rajesh More, A.P.P. for State

Mr.S.U.Marwadi for respondent No.3

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th November 2006.

P.C.

. Heard Mr.Jha for applicant and Mr.Marwadi

for respondent Nos. 2 and 3 and learned A.P.P. for respondent No.1. Applicant seeks cancellation of the order of bail passed on 5th may 2005 in Bail Application No.957 of 2005 by the learned Sessions Judge. Mr.Jha submits that the application for bail was made by respondent Nos. 2 and 3 - original accused in complaint MECR No.7 of 2004. He submits that the order enlarging the applicants (respondent Nos. 2 and 3 before me) on bail was passed on the basis that the dispute with respect to the immovable property has been settled between the parties. He submits that the order clearly records this fact and, therefore, the complainant proceeded to grant her no objection for releasing the applicants before the sessions court on bail.

2. On the next day i.e. on 6th May 2005, according to Mr.Jha, complainant filed an application pointing out that the settlement has been reached outside the Court and, therefore,

the original complainant does not wish to proceed with the matter.

3. On that application an order has been passed by the learned Metropolitan Magistrate taking the application preferred by the original complainant on record and directing that the same be included in the charge sheet.

4. Mr.Jha submits that had it not been for the settlement talks and the agreements reached pursuant thereto, the learned Judge would not have granted bail as the accused are involved in serious offences. Thus, by pointing out to the Court that a settlement has been reached, respondent Nos. 2 and 3 have obtained favourable order for themselves. Thereafter, they have resiled from the statement and such conduct amounts to playing fraud and in any event misleading the Court. For these reasons the application be allowed.

5. Mr.Marwadi on the other hand submits that the present application is an attempt to seek redressal of the alleged grievances arising out of the execution of the documents pursuant to the alleged settlement. In fact, there has been no settlement. The original complainant has forced herself in the premises. She has gained entry illegally and unlawfully. In such circumstances, this application really does not seek cancellation of bail but adjudication of certain rights pursuant to the settlement.

6. I have perused the application with the assistance of learned Counsel for both sides. In my view, the principles on which application for cancellation of bail has to be considered are well settled. This is not an application which seeks cancellation of bail on these settled grounds but for vindication of the alleged rights of the applicant - original complainant under the

so called settlement reached before the sessions court during the course of proceedings. Needless to state that if there is no settlement that aspect is always been open for being pointed out to the trial court while the case is being tried. This is a criminal case and the same has to proceed in accordance with law and after liberty is given to both sides to place their version on merits of the charges. There is no substance in the contention of the applicant before me that the order enlarging the accused on bail would virtually amount to acquittal of respondents from the case. In my view, present application is misconceived because, if the applicant is mislead into executing any document or settling the matter, in addition to such proceedings as are permissible in law for establishing the right, title and interest in the immovable property, it would always be open for applicant to point out that the conduct of the respondent Nos. 2 and 3 before me also amounts to offences punishable

under law. All such steps are always open for being taken and neither the order enlarging respondent Nos. 2 and 3 on bail nor rejection of present application would constitute any bar for either their initiation or prosecution of the same. Further needless to state that pending complaint would also proceed in accordance with law, uninfluenced by the observations of the learned Magistrate and Sessions Judge while enlarging applicant on bail or made during the course of rejection of the instant application. Application dismissed.

(S.C.Dharmadhikari, J)